

**ICOTT** INDUSTRY COALITION ON TECHNOLOGY TRANSFER

1400 L Street, N.W., Washington, D.C. 20005 Suite 800 (202) 371-5994

March 31, 2003

Chief of Records  
ATTN: Request for Comments  
Office of Foreign Assets Control  
Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington DC 20220

**Re: Proposed Rule—Economic Sanctions Enforcement Guidelines, 68 Fed. Reg.  
4422 (January 29, 2003)**

Dear Sir or Madam:

The Industry Coalition on Technology Transfer (ICOTT) appreciates the opportunity to comment on a proposed OFAC rule (the "Proposed Rule") on an updated version of its Economic Sanctions Enforcement Guidelines (the "Enforcement Guidelines").

ICOTT is gratified that OFAC is continuing its recent practice of providing the public with advance notice and opportunities to comment on proposed regulatory changes. Regardless of whether such advance notice is required by law, we believe that there should be a strong presumption in its favor. Absent exigent circumstances requiring quick action, exposing proposed regulations to public comment will only assist OFAC in administering the law, as those regulated often can point out issues, practical matters or other salient considerations that OFAC may have overlooked.

ICOTT also applauds OFAC's decision to replace its internal version of the Enforcement Guidelines with published Enforcement Guidelines based on public notice and comment. As explained in the preamble to the Proposed Rule, more transparent and consistent OFAC procedures and a better informed regulated community are critical to the fair and effective enforcement of OFAC's sanctions programs. The thousands of firms that constitute the regulated community devote extensive internal resources to programs and procedures to assure that their financial and export/import activities comply with U.S. sanctions laws and regulations. By spelling out the overall framework for OFAC's exercise of its enforcement powers, the publication of revised Enforcement Guidelines will help the regulated community design and implement these important compliance efforts.

## Economic Sanctions Enforcement Guidelines

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Notwithstanding our overall agreement with the goals of the Proposed Regulations, we believe that the proposed Enforcement Guidelines can be improved to eliminate ambiguities and thereby better promote compliance. Specifically, as set forth below, there are a number of areas in which the discussion of "Warning Letters" in the proposed appendix to Part 501 can be made more clear, precise, and consistent.

**Unintended, good faith violations in import/export transactions.** Voluntary compliance by the regulated community can be greatly enhanced when enforcement policies recognize that good faith efforts to comply with laws and regulations can, nonetheless, sometimes result in unintended violations. The proposed Enforcement Guidelines make specific note of this possibility in the context of warning letters for violations involving financial transfers. Specifically, in the proposed appendix to Part 501 at Section II.C.1 (Warning Letters, Financial Transfers), OFAC states that warning letters may be issued in lieu of civil penalties for financial transfers where violations are "based on technicalities, where good faith efforts to comply with the law and no aggravating factors are evident." The draft sets no dollar ceiling on the cases eligible for such treatment.

Section II.C.2 (Exports and Imports) states that warning letters can also be issued for certain violations involving "the importation and exportation of goods and/or services valued at \$500 or less." However, unlike the discussion of financial transfers, this section makes no reference to "technicalities" or "good faith efforts to comply with the law" in the context of violations involving exports and imports of goods and/or services. Clearly, such unintentional, good faith violations can and do occur in import/export transactions and can involve amounts in excess of the \$500 set forth in the Proposed Regulation.

For all these reasons, Section II.C.2 should be revised to state specifically that warning letters can and should be issued for good faith, unintentional violations in the import or export of goods or services. Moreover, as in the case of financial transactions, the issuance of warning letters for such violations in this context should not be subject to value limitations. These revisions are particularly important in the case of electronic transactions for the reasons set forth below.

**Electronic commerce transactions.** Many firms represented by ICOTT's member associations are engaged in extensive export and import trade via electronic commerce. These e-commerce transactions are similar in many respects to financial transactions, since they involve automated transfers of property and funds. Many transactions conducted by e-commerce firms do not involve financial institutions of the U.S. banking system. Nonetheless, e-commerce exporters and importers employ highly automated systems -- similar to those used by financial institutions -- for filtering or screening a high volume of names and blocked property. For these reasons, export and import transactions conducted via e-commerce are similar to those in which financial institutions engage and, hence, should be afforded similar treatment under the Warning Letter section of the Enforcement Guidelines.

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Section II.C.1. of the proposed Enforcement Guidelines lists a number of specific examples of financial transfers where violations may occur despite good faith efforts and where a warning letter may be issued. In contrast, Section II.C.2. contains no similar list of such violations involving import/export transactions. This oversight ignores the realities of modern commerce and the fact that export and import transactions are frequently conducted via the high volume, automated means of e-commerce. Many exporters and importers, for example, employ online procurement systems, while others regularly transfer software or technical data via computer downloads.

For these reasons, the proposed Enforcement Guidelines must be revised to recognize the automated nature of modern import/export trade. In particular, OFAC should revise Section II.C.2 (Exports and Imports) to include specific examples (like those in Section II.C.1 (Financial Transfers)) where violations in the e-commerce import/export context might result in the issuance of warning letters. Among other things, these examples should recognize that, where good faith efforts are evident from well-designed electronic filtering systems for e-commerce, OFAC should consider the issuing a warning letter in lieu of civil penalties.

The Industry Coalition on Technology Transfer (ICOTT) is a nonprofit group of major trade associations (names listed below) whose thousands of individual member firms export controlled goods and technology from the United States. ICOTT's principal purposes are to advise U.S. Government officials of industry concerns about export controls, and to inform ICOTT's member trade associations (and in turn their member firms) about the U.S. Government's export control and embargo activities.

Sincerely,



Eric L. Hirschhorn  
Executive Secretary

**ICOTT Member Associations**

American Association of Exporters and Importers (AAEI)  
Electronic Industries Alliance (EIA)  
Semiconductor Equipment and Materials International (SEMI)  
Semiconductor Industry Association (SIA)

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Notwithstanding our overall agreement with the goals of the Proposed Regulations, we believe that the proposed Enforcement Guidelines can be improved to eliminate ambiguities and thereby better promote compliance. Specifically, as set forth below, there are a number of areas in which the discussion of "Warning Letters" in the proposed appendix to Part 501 can be made more clear, precise, and consistent.

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